

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Brenda Michelle Vance, AKA
Brenda Michelle Poppe
2769 Ohio Avenue
Redwood City, CA 94061

Certified Public Accountant
Certificate No. CPA 73426

Respondent.

Case No. AC-2007-44

OAH No.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 08-30-2009.

It is so ORDERED 07-31-2009.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 DIANN SOKOLOFF, State Bar No. 161082
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612-0550
Telephone: (510) 622-2212
6 Facsimile: (510) 622-2270

7 Attorneys for Complainant

8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 Brenda Michelle Vance, AKA
13 Brenda Michelle Poppe
2769 Ohio Avenue
14 Redwood City, CA 94061

15 Certified Public Accountant
Certificate No. CPA 73426

16 Respondent.

Case No. AC-2007-44

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:
20

21 PARTIES

22 1. Carol Sigmann, who was the Complainant in this matter and filed this
23 matter before the Board, was, at the time, the Executive Officer of the California Board of
24 Accountancy, and brought this action solely in her official capacity. For purposes of resolving
25 this matter, Patti Bowers, is the current Executive Officer of the Board, and succeeds Ms.
26 Sigmann as the Complainant. The Complainant is represented in this matter by Edmund G.
27 Brown Jr., Attorney General of the State of California, by Wilbert E. Bennett and Diann
28 Sokoloff, Deputy Attorneys General.

2. Respondent Brenda Michelle Vance (Respondent) is represented in this proceeding by attorney Steven R. Manchester, whose address is 10 Almaden Blvd., Ste. 1250, San Jose, CA 95113.

3. On or about May 9, 1997, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. CPA 73426 to Brenda Michelle Vance (Respondent).

JURISDICTION

4. Accusation No. AC-2007-44 was filed before the California Board of Accountancy, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 30, 2008. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2007-44 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2007-44. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

8. Respondent understands that by signing this stipulation she enables the Board to issue an order imposing discipline upon the licenses without further process.

1 CULPABILITY

2 9. Respondent admits the truth of the charge and allegation in Accusation
3 No. AC-2007- 44 related to the violation of Business and Professions Code section 5100 (general
4 unprofessional conduct). Respondent admits that sections 5100(c) (gross negligence) and
5 5100(k) (obtaining property by fraudulent means or false pretenses) charges, if proven at hearing,
6 would be grounds for discipline.

7 10. Respondent agrees that her Certified Public Accountant Certificate is
8 subject to discipline and she agrees to be bound by the Board's imposition of discipline as set
9 forth in the Disciplinary Order below.

10 CIRCUMSTANCES IN MITIGATION

11 11. Respondent has never been the subject of any disciplinary action. She is
12 admitting responsibility at an early stage in the proceedings.

13 CONTINGENCY

14 12. This stipulation shall be subject to approval by the Board. Respondent
15 understands and agrees that counsel for Complainant and the staff of the Board may
16 communicate directly with the Board regarding this stipulation and settlement, without notice to
17 or participation by Respondent or her counsel. By signing the stipulation, Respondent
18 understands and agrees that she may not withdraw her agreement or seek to rescind the
19 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
20 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
21 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
22 the parties, and the Board shall not be disqualified from further action by having considered this
23 matter.

24 13. The parties understand and agree that facsimile copies of this Stipulated
25 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
26 force and effect as the originals.

27 14. In consideration of the foregoing admissions and stipulations, the parties
28 agree that the Board may, without further notice or formal proceeding, issue and enter the

1 following Disciplinary Order:

2 **DISCIPLINARY ORDER**

3
4 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA
5 73426 issued to Respondent Brenda Michelle Vance (Respondent) is revoked. However, the
6 revocation is stayed and Respondent is placed on probation for three (3) years on the following
7 terms and conditions.

8 1. **Obey All Laws.** Respondent shall obey all federal, California, other
9 states' and local laws, including those rules relating to the practice of public accountancy in
10 California.

11 2. **Submit Written Reports.** Respondent shall submit, within ten (10) days
12 of completion of the quarter, written reports to the Board on a form obtained from the Board.
13 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,
14 and verification of actions as are required. These declarations shall contain statements relative to
15 Respondent's compliance with all the terms and conditions of probation. Respondent shall
16 immediately execute all release of information forms as may be required by the Board or its
17 representatives.

18 3. **Personal Appearances.** Respondent shall, during the period of probation,
19 appear in person at interviews/meetings as directed by the Board or its designated
20 representatives, provided such notification is accomplished in a timely manner.

21 4. **Comply With Probation.** Respondent shall fully comply with the terms
22 and conditions of the probation imposed by the Board and shall cooperate fully with
23 representatives of the Board of Accountancy in its monitoring and investigation of the
24 Respondent's compliance with probation terms and conditions.

25 5. **Practice Investigation.** Respondent shall be subject to, and shall permit,
26 practice investigation of the Respondent's professional practice. Such a practice investigation
27 shall be conducted by representatives of the Board, provided notification of such review is
28 accomplished in a timely manner.

1 6. **Comply With Citations.** Respondent shall comply with all final orders
2 resulting from citations issued by the Board of Accountancy.

3 7. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
4 Respondent should leave California to reside or practice outside this state, Respondent must
5 notify the Board in writing of the dates of departure and return. Periods of non-California
6 residency or practice outside the state shall not apply to reduction of the probationary period, or
7 of any suspension. No obligation imposed herein, including requirements to file written reports,
8 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
9 affected by such periods of out-of-state residency or practice except at the written direction of the
10 Board.

11 8. **Violation of Probation.** If Respondent violates probation in any respect,
12 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
13 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke
14 probation is filed against Respondent during probation, the Board shall have continuing
15 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
16 is final.

17 9. **Completion of Probation.** Upon successful completion of probation,
18 Respondent's license will be fully restored.

19 10. **Ethics Course/Examination.** Respondent shall take and pass with a score
20 of 90 percent or better a Board approved ethics examination (within a given period of time or
21 prior to the resumption of practice). (Exam will be passed prior to resumption of practice where
22 license has been suspended or where otherwise appropriate.)

23 If Respondent fails to pass said examination within the time period provided or
24 within two attempts, Respondent shall so notify the Board and shall cease practice until
25 Respondent takes and successfully passes said exam, has submitted proof of same to the Board,
26 and has been notified by the Board that she may resume practice. Failure to pass the required
27 examination no later than 100 days prior to the termination of probation shall constitute a
28 violation of probation.

1 Notwithstanding any other provision of this probation, failure to take and pass this
2 examination within five years of the effective date of this order constitutes a separate cause for
3 discipline of Respondent's license.

4 11. **Active License Status.** Respondent shall at all times maintain an active
5 license status with the Board, including during any period of suspension. If the license is expired
6 at the time the Board's decision becomes effective, the license must be renewed within 30 days of
7 the effective date of the decision.

8 12. **Cost Reimbursement.** Respondent shall reimburse the Board \$ 13,989.50
9 for its investigation and prosecution costs. The payment shall be made in quarterly payments
10 (due with quarterly written reports), the final payment being due one month before probation is
11 scheduled to terminate.

12 ///


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14 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and
3 have fully discussed it with my attorney, Steven R. Manchester. I understand the stipulation and
4 the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
6 bound by the Decision and Order of the California Board of Accountancy.

7 DATED: 4/27/09.

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9 
10 BREND A MICHELLE VANCE
Respondent

11 I have read and fully discussed with Respondent Brenda Michelle Vance the terms
12 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
13 Order. I approve its form and content.

14 DATED: 5/5/09
15 
16 STEVEN R. MANCHESTER
Attorney for Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the California Board of Accountancy of the Department of
20 Consumer Affairs.

21 DATED: 5/22/09

22 EDMUND G. BROWN JR., Attorney General
of the State of California

23 WILBERT E. BENNETT
Supervising Deputy Attorney General

24 
25 DIANN SOKOLOFF
26 Deputy Attorney General

27 Attorneys for Complainant

Exhibit A

Accusation No. AC-2007-44

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612-0550
Telephone: (510) 622-2226
6 Facsimile: (510) 622-2121

7 Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2007-44

13 BRENDA MICHELLE VANCE, AKA
14 BRENDA MICHELLE POPPE
3 Lagoon Dr. #400
15 Redwood City, California 94065

ACCUSATION

16 Certified Public Accountant Certificate No. CPA
73426

17
18 Respondent.

19 The Complainant alleges:

20 **PARTIES and JURISDICTION**

21 1. The Complainant herein, Carol Sigmann, brings this action under Business and
22 Professions Code Section 5100 solely in her official capacity as the Executive Officer of the
23 California Board of Accountancy, Department of Consumer Affairs ("Board").

24 2. On or about May 9, 1997, the California Board of Accountancy issued Certified
25 Public Accountant Certificate Number CPA 73426 to Brenda Michelle Vance, at the time known
26 as Brenda Michelle Poppe, Respondent. The Certified Public Accountant Certificate was in full
27 force and effect at all times relevant to the charges brought herein and is currently renewed
28 through May 31, 2008.

1 3. This Accusation is brought before the Board under the authority of Section 5100 of the
2 Business and Professions Code,¹ which provides, in relevant part, that, after notice and hearing,
3 the board may revoke, suspend or refuse to renew any permit or certificate granted, for
4 unprofessional conduct including, but not limited to, in pertinent part, dishonesty or gross
5 negligence in the practice of public accountancy (Section 5100(c)) and obtaining property or
6 other valuable consideration by fraudulent means or false pretenses (Section 5100(k)).

7 4. Code Sections 118(b) and 5109 provide in pertinent part that the suspension,
8 expiration, cancellation, or forfeiture of a license issued by the Board shall not, deprive the Board
9 of its authority to investigate, or to institute or continue a disciplinary proceeding against, a
10 licensee upon any ground provided by law, or to enter an order suspending or revoking the
11 license or otherwise taking disciplinary action against the licensee on any such ground.

12 5. Code Section 5107 authorizes the Board's recovery of certain costs which result from
13 the investigation and prosecution of violations of the Accountancy Act. Section 5107(a) of the
14 Code provides in pertinent part that the executive officer of the Board may request the
15 administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct
16 any holder of a permit or certificate found to have violated the Accountancy Act to pay to the
17 Board all reasonable costs of investigation and prosecution of the case, including, but not limited
18 to, attorneys' fees incurred prior to the commencement of the hearing. A certified copy of the
19 actual costs, or a good faith estimate of costs signed by the Executive Officer, constitute prima
20 facie evidence of reasonable costs of investigation and prosecution of the case.

21 6. Code Section 5000.1 provides as follows: "Protection of the public shall be the
22 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
23 and disciplinary functions. Whenever the protection of the public is inconsistent with other
24 interests sought to be promoted, the protection of the public shall be paramount."

25 7. California Penal Code section 502(c)(7) provides that any person who knowingly and
26

27 1. All statutory references are to the Business and Professions Code unless otherwise
28 indicated.

1 without permission accesses or causes to be accessed any computer, computer system or
2 computer network violates the law.

3
4 **CIRCUMSTANCES SUPPORTING THE IMPOSITION
OF DISCIPLINE ON RESPONDENT**

5 8. The circumstances supporting the imposition of discipline against Respondent Vance
6 are summarized below.

7 A. At the time of the events relevant to this accusation, Respondent Vance had worked at
8 the firm of Seiler & Company, LLP, now named Seiler LLP (the "firm") since 1993.

9 B. Mrs. S.² was a client of the firm. Mrs. S, who was divorced from husband, Dr. S., in
10 November 2004, was being represented by David Hutchings in the firm's Litigation Support
11 Services Group, concerning property and support issues related to her divorce from Dr. S. Mr.
12 Hutchings is a Board licensee.

13 C. Mrs. S requested that the firm prepare, in 2005, her 2004 individual tax return.
14 Respondent Vance assumed responsibility for the preparation of Mrs. S's tax return, which
15 required resolution of the treatment of certain property and support issues.

16 D. The Franchise Tax Board (FTB) maintains a website through which authorized
17 persons may access confidential taxpayer information. The website provides: "Only the
18 individual taxpayers or their authorized representatives may obtain taxpayer account information.
19 Unauthorized access to account information is unlawful as described in Section 502 of the
20 California penal code."

21 E. Mrs. S.'s ex-husband, Dr. S., was not, at any time, a client of the firm, nor anyone in
22 the firm, including Respondent Vance. On at least two occasions in 2005, Respondent Vance
23 accessed Dr. S.'s confidential tax information on the FTB website without Dr. S's knowledge or
24 authorization, and without being otherwise authorized to do so. In order to gain access to the
25 information, Respondent Vance was required to represent that Dr. S. was her client, which he in
26

27
28

2. The full names of the persons identified herein by their initials will be provided upon a
timely request for discovery.

1 fact was not. The firm was representing Mrs. S in an adversarial proceeding in family court
2 against Dr. S. at the time the access was made.

3
4 **FIRST CAUSE FOR DISCIPLINE**

5 **Dishonesty in the Practice of Public Accountancy**
6 **[Business and Professions Code § 5100(c)]**

7 9. Incorporating by reference the matters alleged in paragraph 8 above, the Certified
8 Public Accountant Certificate of Respondent Vance is subject to disciplinary action in that her
9 actions, in representing that she was authorized to access Dr. S's confidential tax information
10 when in fact she was not, constituted dishonesty in the practice of public accountancy within the
11 meaning of Code section 5100(c), and established cause for discipline of Respondent Vance's
12 license under Code section 5100.

13
14 **SECOND CAUSE FOR DISCIPLINE**

15 **Gross Negligence in the Practice of Public Accountancy**
16 **[Business and Professions Code § 5100(c)]**

17 10. Incorporating by reference the matters alleged in paragraph 8 above, the Certified
18 Public Accountant Certificate of Respondent Vance is subject to disciplinary action in that her
19 actions in accessing and using confidential tax information without authorization and in violation
20 of law constitute extreme departures from the standard of practice, thereby constituting gross
21 negligence in the practice of public accountancy within the meaning of Code section 5100(c), and
22 establishing cause for discipline of Respondent Vance's license under Code section 5100.

23
24 **THIRD CAUSE FOR DISCIPLINE**

25 **Obtaining Property/Valuable Consideration by**
26 **Fraudulent Means or False Pretenses**
[Business and Professions Code § 5100(k)]

27 11. Incorporating by reference the matters alleged in paragraph 8 above, the Certified
28 Public Accountant Certificate of Respondent Vance is subject to disciplinary action in that she

1 obtained Dr. S's confidential tax information, that is, his property, by falsely representing on the
2 FTB website that she was authorized to do. Her actions, in fraudulently representing and falsely
3 pretending that she was authorized to have this access, and her obtaining, as a result, this
4 confidential information for the use of another, constitute violations of the Accountancy Act
5 within the meaning of Code section 5100(k), and establish cause for discipline of Respondent
6 Vance's license under Code section 5100.

7 8 **FOURTH CAUSE FOR DISCIPLINE**

9 **General Unprofessional Conduct [Business and Professions Code § 5100]**

10 12. Incorporating by reference the matters alleged in paragraph 8 above, the Certified
11 Public Accountant Certificate of Respondent Vance is subject to disciplinary action in that her
12 actions, in accessing, obtaining, and using confidential tax information of someone who was not
13 her client, without authorization and in violation of law, constitute general unprofessional
14 conduct under the non-inclusive provisions of Code section 5100.

15 **OTHER MATTERS**

16 **Cost Recovery**

17 13. Pursuant to Code Section 5107, it is requested that the administrative law judge, as
18 part of the proposed decision in this proceeding, direct Respondent to pay to the Board all
19 reasonable costs of investigation and prosecution in this case, including, but not limited to,
20 attorneys' fees.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

24 1. Revoking, suspending, or otherwise imposing discipline upon Certified Public
25 Accountant Certificate Number CPA 73426, issued to Brenda Michelle Vance, aka Brenda
26 Michelle Poppe;

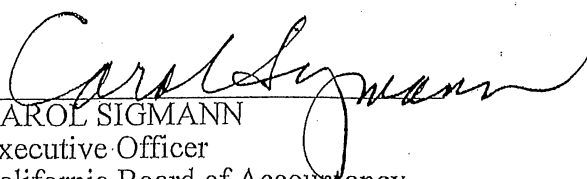
27 2. Ordering Brenda Michelle Vance to pay the California Board of Accountancy the
28 reasonable costs of the investigation and enforcement of this case, pursuant to Business and

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Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: May 28, 2008


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

SF2007401362